

5.0 CONSISTENCY WITH THE FMP AND OTHER APPLICABLE LAWS

5.1 Consistency with the FMP

The socio-economic framework in the Pacific Coast Groundfish FMP requires that proposed management measures and viable alternatives be reviewed and consideration given to the following criteria: a) how the action is expected to promote achievement of the goals and objectives of the FMP; b) likely impacts on other management measures; c) biological impacts; d) and economic impacts, particularly on the cost to the fishing industry; and e) accomplishment of one of a list of factors.

GOALS AND OBJECTIVES OF THE FMP

The Council is committed to developing long-range plans for managing the Pacific Coast groundfish fisheries that prevent overfishing and loss of habitat, yet provide the maximum net value of the resource, and achieve maximum biological yield. Alternatives 2 and 3 are consistent with FMP goal 1-objective 1, and goal 3-objective 10.

Goal 1- Conservation: Objective 1 -- maintain an information flow on the status of the fishery and the fishery resource which allows for informed management decisions as the fishery occurs.

Goal 3- Utilization: Objective 10 -- strive to reduce the economic incentives and regulatory measures that lead to wastage of fish. Also, develop management measures that minimize bycatch to the extent practicable and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. In addition, promote and support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those to improve information necessary to determine the extent to which it is practicable to reduce bycatch and bycatch mortality.

ACCOMPLISHMENT OF ONE OF THE FACTORS LISTED IN FMP SECTION 6.2.3.

Under the socio-economic framework, the proposed action must accomplish at least 1 of the criteria defined in section 6.2.3 of the FMP. Alternatives 3, 4 and 5 are likely to accomplish objective 2 by providing information to avoid exceeding a quota, harvest guideline or allocation, and objective 13 by maintaining a data collection and means for verification.

5.2 Magnuson-Stevens Conservation and Management Act

The Magnuson-Stevens Act provides parameters and guidance for federal fisheries management, requiring that the Councils and NMFS adhere to a broad array of policy ideals. Overarching principles for fisheries management are found in the Act's National Standards. In crafting fisheries management regimes, the Councils and NMFS must balance their recommendations to meet these different national standards.

National Standard 1 requires that conservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The proposed action is to implement a monitoring program to monitor the integrity of closed areas that were established to protect overfished species. Information provided under Issue 1, Alternatives 3, 4 or 5 have the least risk of overfishing because they would provide information that could be used to reduce the likelihood of overfishing while allowing for the harvests of healthy stocks

National Standard 2 requires the use of the best available scientific information. The proposed action is to implement a monitoring program to monitor the integrity of closed areas that were established to protect overfished species. Data collected under Issue 1, Alternative 5 would provide timely catch and biological data from the at-sea fishery. Data collected under Issue 1, Alternatives 3 or 4 would be used to understand the level of fishing effort and how it was distributed. When combined with data from the existing federal observer program it could be used to more accurately estimate total catch.

National Standard 3 requires, to the extent practicable, that an individual stock of fish be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. This standard is not affected by the proposed action to implement a monitoring program to monitor the integrity of closed areas.

National Standard 4 requires that conservation and management measures not discriminate between residents of different States. None of the alternatives would discriminate between residents of different States.

National Standard 5 is not affected by the proposed actions because it does not affect efficiency in the utilization of fishery resources.

National Standard 6 requires that Conservation and management measures take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." All alternatives meet this standard

National Standard 7 requires that conservation and management measures to minimize costs and avoid unnecessary duplication. Several measures were taken to minimize the costs of a monitoring program to the industry. The council recommended that the basic VMS (Issue 1, Alternative 3) unit be implemented rather than an upgraded and more expensive model that allows for two-way communications (Issue 1, Alternative 4). Alternatives 2-5 require declaration reports for vessels that intended to legally fish within a conservation area. To reduce the time burden and cost of declaration reports, they would only be required when vessel changes gears rather than on every trip.

National Standard 8 provides protection to fishing communities by requiring that conservation and management measures be consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities. The proposed alternatives are consistent with this standard.

National Standard 9 requires that conservation and management measures to minimize bycatch and minimize the mortality of bycatch. NMFS is required to "promote and support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those to improve information necessary to determine the extent to which it is practicable to reduce bycatch and bycatch mortality. The proposed action to implement a monitoring program to monitor the integrity of closed areas that were established to protect overfished species is consistent with this standard.

National Standard 10 Conservation and Management measures shall, to the extent practicable, promote the safety of human life at sea. Issue 1, Alternatives 3 and 4 will have the greatest safety benefits because the VMS system will provide for a Distress signal that may reduce response time in an emergency. Under Issue 1, Alternatives 5, observers would be NMFS-certified and would therefore be considered observers under the Magnuson-Stevens Act and the vessels would be required to meet observer health and safety provisions at 50 CFR 600.725 and 600.746.

Essential Fish Habitat This action will affect fishing in areas designated as essential fish habitat (EFH) by Amendment 11 to the FMP. The proposed action is to implement a monitor program to monitor the integrity of closed areas that were established to protect overfished species. The potential effects of the proposed actions are not expected to have either no adverse effect on EFH, or to have a positive effect resulting from reduced fishing effort in critical areas. No EFH consultation is warranted for this action.

5.3 Endangered Species Act

NMFS issued Biological Opinions (B.O.) under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern

California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the 11,000 fish chinook bycatch amount specified in the Pacific whiting fishery B.O. (December 19, 1999) incidental take statement, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental take statement from the 1999 whiting B.O., NMFS determined that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This proposed rule implements a data collection program and is within the scope of these consultations. Because the impacts of this action fall within the scope of the impacts considered in these B.O.s, additional consultations on these species are not required for this action.

5.4 Marine Mammal Protection Act

Under the MMPA, marine mammals whose abundance falls below the optimum sustainable population level (usually regarded as 60% of carrying capacity or maximum population size) can be listed as "depleted". Populations listed as threatened or endangered under the ESA are automatically depleted under the terms of the MMPA. Currently the Stellar sea lion population in the WOC is listed as threatened under the ESA and the fur seal population is listed as depleted under the MMPA. Incidental takes of these species in the Pacific Coast fisheries are well under the annual PBR. None of the proposed management alternatives are likely to affect the incidental mortality levels of species protected under the MMPA.

The WOC groundfish fisheries are considered category III fisheries where the annual mortality and serious injury of a stock by the fishery is less than or equal to 1 percent of the PBR level. Implementation of Alternatives 3,4, or 5 are expected to benefit MMPA species because it will allow observer data and data from other sources to be joined to better understand the extent of potential fishing related impacts on various marine mammal species.

5.5 Coastal Zone Management Act

The proposed alternatives would be implemented in a manner that is consistent to the maximum extent practicable with the enforceable policies of the approved coastal zone management programs of Washington, Oregon, and California. This determination has been submitted to the responsible state agencies for review under section 307(c)(1) of the Coastal Zone Management Act (CZMA). The relationship of the groundfish FMP with the CZMA is discussed in Section 11.7.3 of the groundfish FMP. The groundfish FMP has been found to be consistent with the Washington, Oregon, and California coastal zone management programs. The recommended action is consistent and within the scope of the actions contemplated under the framework FMP.

Under the CZMA, each state develops its own coastal zone management program which is then submitted for federal approval. This has resulted in programs which vary widely from one state to the next. The EA for Amendment 14 to groundfish FMP contains a summary of the fishery relevant consistency criteria used in federal consistency determinations by each state.

5.6 Paperwork Reduction Act

This action contains a collection-of-information subject to the PRA. These materials all represent a new collection of information that are subject to the Paperwork Reduction Act (PRA).

Declaration reports Under Issue 1, Alternatives 2,3, 4 and 5 vessels registered to limited entry permits; any vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber; and any tribal vessel using trawl gear, will be required to submit a declaration report to NMFS before the vessel is used to fish in any rockfish conservation area, including the cowcod closure. This report would allow NMFS to identify vessels that were legally fishing within a

restricted conservation areas. Declaration reports will include: the vessel name and/or identification number, and gear declaration. At 4 minutes per response for each declaration report the expected time burden on the public from all 723 respondents would be 578 hours annually.

Installation/activation reports Under Issue 1, Alternatives 3 and 4, vessel owners and operators would be required to follow a prescribed installation protocol and provide certain information about the installation of their VMS transceiver unit to NMFS. An installation checklist would be issued by NMFS and the VMS installer would certify the information about the installation by signing a certification form and returning it to NMFS. At 4 hours per response for installation of the VMS transceiver unit and 5 minutes per response to send the installation/activation report the expected time burden on the public from all 424 respondents would be 1,696 hours for installation of the VMS transceiver units and 34 hours annually for sending the installation/activation report.

Hourly position reports Under Issue 1, Alternatives 3 and 4, hourly positions are automatically transmitted to NMFS via satellite once the VMS transceiver unit is installed and activated. Vessels that are required to have VMS must operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year, except when the vessel leaves the EEZ for an extended period. The number of annual transmissions depends on the VMS transceiver that the vessel owner purchases and the number of fishing days per year in the managed area. With many of the systems, there is a sleep function, when the vessel is in port, position transmissions are automatically reduced. At 5 seconds per response for each hourly transmission the expected time burden on the public from all 424 respondents would be 5,159 hours annually.

Exemption reports Under Issue 1, Alternatives 3 and 4, an exemption report could be sent by the vessel owner or operator because they wanted their vessel to be excused from the requirement to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year. Such exemptions would only be allowed for vessels that operate outside of the EEZ for more than 7 consecutive days or for vessels that are continuously out of the water for more than 7 consecutive days. A vessel may be exempted from the requirement to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year if a valid exemption report, is received by NMFS, Office for Law Enforcement (OLE) and the vessel is in compliance with all conditions and requirements of the exemption. At 4 minutes per response for each exemption report the expected time burden on the public from 145 respondents would be 19 hours annually.

5.7 Executive Order 12866

This action is not significant under E.O. 12866. This action will not have a cumulative effect on the economy of \$100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

5.8 Executive Order 13175

Executive Order 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

The Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At Section 302(b)(5), the Magnuson-Stevens Act reserves a seat on the Council for a representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. government formally recognizes that the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 660.324). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. The proposed regulations have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

5.9 Migratory Bird Treaty Act and Executive Order 13186

The Migratory Bird Treaty Act of 1918 was designed to end the commercial trade of migratory birds and their feathers that, by the early years of the 20th century, had diminished populations of many native bird species. The Act states that it is unlawful to take, kill, or possess migratory birds and their parts (including eggs, nests, and feathers) and is a shared agreement between the United States, Canada, Japan, Mexico, and Russia to protect a common migratory bird resource. The Migratory Bird Treaty Act prohibits the directed take of seabirds, but the incidental take of seabirds does occur. None of the proposed management alternatives, or the Council recommended action are likely to affect the incidental take of seabirds protected by the Migratory Bird Treaty Act.

Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds) is intended to ensure that each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations develop and implement a Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service that shall promote the conservation of migratory bird populations. Currently, NMFS is planning to develop and implement a MOU with the U.S. Fish and Wildlife Service. None of the proposed management alternatives are likely to have a measurable effect on migratory bird populations.

5.10 Executive Order 12898 (Environmental Justice) and 13132 (Federalism)

There is no specific guidance on application of EO 12898 to fishery management actions. The EO states that environmental justice should be part of an agency's mission "by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority or low-income populations."

These recommendations would not have federalism implications subject to E.O. 13132. State representatives on the Council have been fully consulted in the development of this policy recommendation.

6.0 REGULATORY IMPACT REVIEW AND REGULATORY FLEXIBILITY ANALYSIS

The RIR and IRFA analyses have many aspects in common with each other and with EAs. Much of the information required for the RIR and IRFA analysis has been provided above in the EA.. Table 6.0.1 identifies where previous discussions relevant to the EA and IRFA can be found in this document. In addition to the information provided in the EA, above, a basic economic profile of the fishery is provided annually in the Council's SAFE document.

Table 6.0 1 Regulatory Impact Review and Regulatory Flexibility Analysis

RIR Elements of Analysis	Corresponding Sections in EA	IRFA Elements of Analysis	Corresponding Sections in EA
Description of management objectives	1.2 and 1.3	Description of why actions are being considered	1.2 and 1.3
Description of the Fishery	3.3	Statement of the objectives of, and legal basis for actions	1.0
Statement of the Problem	1.2 and 1.3	Description of projected reporting, recordkeeping and other compliance requirements of the proposed action	4.3
Description of each selected alternative	2.2	Identification of all relevant Federal rules	5.0
An economic analysis of the expected effects of each selected alternative relative to status quo	4.3		

6.1 Regulatory Impact Review

The RIR is designed to determine whether the proposed action could be considered a “significant regulatory actions” according to E.O. 12866. E.O. 12866 test requirements used to assess whether or not an action would be a “significant regulatory action”, and identifies the expected outcomes of the proposed management alternatives. 1) Have a annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; 2) Create a serious inconsistency or otherwise interfere with action taken or planned by another agency; 3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or 4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive Order. Based on results of the economic analysis contained in section 4.3, this action is not expected to be significant under E.O. 12866.

6.2 Initial Regulatory Flexibility Analysis

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities (attachment 1). To ensure a broad consideration of impacts on small entities, NMFS has prepared this IRFA without first making the threshold determination whether this proposed action could be certified as not having a significant economic impact on a substantial number of small entities. NMFS, must determine such certification to be appropriate if established by information received in the public comment period.

1) A description of the reasons why the action by the agency is being considered.

For 2003, the Council sought a management strategy that would allow fishing to continue in areas and with gear that can harvest healthy stocks with little incidental catch of low abundance species. Recent stock assessments for bocaccio, yelloweye, canary and darkblotched rockfish, indicate that these species are in an overfished status (<25% of the virgin biomass). Therefore, measures must be taken to protect these stocks and rebuild them to sustainable biomass levels. The Council recommended that NMFS define additional management areas for the groundfish fishery that are based on bottom depth ranges where these overfished species are commonly found. For 2003, large-scale depth-related areas, referred to as groundfish conservation areas, will be used to restrict commercial and recreational fishing across much of the continental shelf. Deep-water fisheries on the slope and nearshore fisheries will be permitted, but only in areas seaward or shoreward of the depth-based conservation areas.

The boundaries of the groundfish conservation areas are complex, involving hundreds of points of latitude and longitude to delineate nearshore and offshore fathom curves. The areas are vast, extending along the entire West Coast from Canada to Mexico, and the weather and sea conditions are frequently harsh. Some fishing such as midwater trawling for pelagic species and shrimp trawling providing finfish excluders are

Requirements of an IRFA

The Regulatory Flexibility Act (5 U.S.C. 603) states that:

(b) Each initial regulatory flexibility analysis required under this section shall contain--

- (1) a description of the reasons why action by the agency is being considered;
- (2) a succinct statement of the objectives of, and legal basis for, the proposed rule;
- (3) a description of and, where feasible, and estimate of the number of small entities to which the proposed rule will apply;
- (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as--

- (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- (3) the use of performance rather than design standards; and
- (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

used, will be allowed to occur in the conservation areas. In addition, vessels intending to fish seaward of the westernmost boundary of a conservation area will be allowed to transit through the area providing the gear is properly stowed. Ensuring the integrity of conservation areas using traditional enforcement methods is especially difficult when the closed areas are large-scale and the lines defining the areas are irregular. Furthermore, when some gear types and target fishing are allowed in all or a portion of the conservation area while other fishing activities are prohibited it is difficult and costly to effectively enforce restrictions using traditional methods.

To allow for a more liberal depth-based management regime, as proposed by the Council for 2003, it was necessary to take action to establish a monitoring program to ensure the integrity of these large irregularly shaped depth-based conservation areas. NMFS has prepared regulations, at 50 CFR Part 660 subpart G, that require vessels registered to a Pacific Coast groundfish fishery limited entry permits to carry and use mobile Vessel Monitoring System (VMS) transceiver units while fishing in the EEZ off the coasts of Washington, Oregon and California. This regulation will enhance monitoring of compliance with large-scale depth-based restrictions for fishing across much of the continental shelf. The regulations at 50 CFR 660 subpart G also require the operator of any vessel registered to a limited entry permit, and any other commercial or tribal vessel using trawl gear; including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber, to identify their intent to fish within restricted areas. These regulations further the conservation goals and objectives of the Pacific Coast Groundfish FMP by allowing fishing to continue in areas and with gears that can harvest healthy stocks with little incidental catch of low abundance species.

NMFS Guidance on RFA

NMFS has provided guidance as to how the regulatory flexibility analysis relates to other analyses and other applicable law. (source: "Operational Guidelines, Fishery Management Plan Process" National Marine Fisheries Service, Silver Spring MD, March 1, 1995, Appendix I.2.d.)

"The RFA requires that the agency identify and consider alternatives that minimize the impacts of a regulation on small entities, but it does not require that the agency select the alternative with the least net cost. Section 606 of the RFA clearly states that the requirements of a regulatory flexibility analysis do not alter standards otherwise applicable by law. Executive Order 12866 requires that agencies provide an assessment of the potential costs and benefits of a "significant" action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental function (section 6(a)(3)(B)(ii)). However, the Executive Order also requires agencies to adhere to the requirements of the RFA and other applicable law (section 6(a)(3)). In short, when either the regulatory flexibility analysis or the RIR conflict with a statutory mandate (e.g., the Magnuson Act), the resulting decision must conform to the statute."

2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

The U.S. groundfish fisheries in the EEZ off the Washington, Oregon, and California coasts are managed pursuant to the Magnuson-Stevens Act and the Pacific Coast Groundfish FMP. The FMP was developed by the Council. Regulations implementing the FMP appear at 50 CFR part 660 subpart G.

3) A description of and, where feasible, and estimate of the number of small entities to which the proposed rule will apply;

Any vessel registered to a limited entry permit that operates in the EEZ off the states of Washington, Oregon or California must carry a NMFS OLE-approved mobile transceiver unit. Declaration report requirements apply to vessels registered to limited entry permits with trawl endorsements; any vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber; and any tribal vessel using trawl gear, before the vessel is used to fish in any trawl RCA or the CCA in a manner that is consistent with the requirements of the conservation areas (I.E pelagic trawl during when permitted for pelagic species such as yellowtail and widow rockfish or Pacific whiting; or pink shrimp gear with the required finfish excluder during the pink shrimp season). In addition, declaration reports will be required from vessels registered to limited entry permits with longline and pot endorsements, before the vessel can be used to fish in any Non-trawl RCA or the CCA, in a manner that is consistent with the requirements of those conservation areas (e.g. during the Dungeness crab or lobster fisheries).

The requirement to declare trips is applicable to 723, comprised of 424 limited entry vessels, 294 open access vessels, and 5 tribal vessels. The requirement to install and operate a VMS transceiver applies to 424 limited entry vessels, comprised of 257 trawl, 140 longline, 11 pot and 16 combined gear vessels. Except for the limited entry processing vessels in the at-sea whiting sector, all vessels affected by this action are assumed to have gross annual receipts of under \$3.5 million and are defined as small entities under Section 601 of the Regulatory Flexibility Act.

Most vessels affected by this action have gross annual receipts of under \$3.5 million and are defined as small entities under Section 601 of the Regulatory Flexibility Act, however, there are approximately 10 vessels defined as large entities operating in the limited trawl fishery. There could be some disproportionate economic impacts on small entities versus large entities for the group of limited trawl vessels that are less than 40 feet in length and have relatively low gross annual receipts. Depending upon the cost of the VMS, some of these smaller vessels would be forced to pay a relatively larger share of their annual expenditures for purchase of the VMS compared to the larger vessels. However, all vessels would increase their gross receipts by being able to fish in more productive areas, having the effect of increasing profitability and mitigating the cost of the VMS.

4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Any vessel registered to a limited entry permit that operates in the EEZ off the states of Washington, Oregon or California must carry a NMFS OLE-approved mobile transceiver unit. Vessels required to carry VMS transceiver units will provide installation/activation reports, hourly position reports, and exemption reports. The following reports are required for a VMS system to be effectively implemented:

Installation/activation reports would require vessel owners and operators to follow a prescribed installation protocol and provide certain information about the installation to NMFS. An installation checklist would be issued by NMFS and the VMS installer would certify the information about the installation by signing a certification form and returning it to NMFS. Given that the VMS hardware and satellite communications services are provided by third parties, as approved by NMFS, there is a need for NMFS to collect information regarding the individual vessel's installation in order to ensure that automated position reports will be received. No special training or skills are necessary to prepare this report.

Hourly position reports are automatically transmitted by the VMS unit to NMFS via satellite once the VMS transceiver unit is installed and activated. Vessels that are required to have VMS must operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year, except when the vessel leaves the EEZ for an extended period. The number of annual transmissions depends on the VMS transceiver that the vessel owner purchases and the number of fishing days per year in the managed area. With many of the systems, there is a sleep function, when the vessel is in port, position transmissions are automatically reduced. This allows for port stays without significant power drain or power shutdown. When the vessel goes to sea, the unit restarts and normal position transmissions automatically resume. Because the unit is continuously operable, NMFS may query the unit at any time to obtain a position report.

Exemption reports are optional, and would be sent by the vessel owner or operator because they wanted their vessel to be excused from the requirement to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year. Such exemptions would only be allowed for vessels that will be operating outside of the EEZ for more than 7 consecutive days or for vessels that will be continuously out of the water for more than 7 consecutive days. A vessel may be exempted from the requirement to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year if a valid exemption report, is received by NMFS, Office for Law Enforcement (OLE) and the vessel is in compliance with all conditions and requirements of the exemption. An exemption report would be valid until a second report was sent to cancel the exemption.

Declaration reports Vessels registered to limited entry permits with trawl endorsements; any vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber; and any tribal vessel using trawl gear, will be required to send a declaration report before the vessel is used to fish in any trawl RCA or the CCA in a manner that is consistent with the requirements of the conservation areas (I.E pelagic trawl during when permitted for pelagic species such as yellowtail and widow rockfish or Pacific whiting; or pink shrimp gear with the required finfish excluder during the pink shrimp season). In addition, declaration reports will be required from vessels registered to limited entry permits with longline and pot endorsements, before the vessel can be used to fish in any Non-trawl RCA or the CCA, in a manner that is consistent with the requirements of those conservation areas (e.g. during the Dungeness crab or lobster fisheries). Each declaration report will be valid until cancelled or revised by the vessel operator. After a declaration report has been sent, the vessel cannot engage in any activity with gear that is inconsistent with that which can be used in the conservation area unless another declaration report is sent to cancel or change the previous declaration.

Declaration and exemption reports will be submitted by using an Interactive Voice Response (IVR) system . The IVR system, which is accessed by dialing a toll-free number, prompts the caller by asking a series of questions and allowing the caller to use the touch-tone telephone to respond. An IVR system allows vessels to quickly and easily submit their report 24 hours a day and will reduce the paperwork burden on both the fisherman and the NMFS, as it makes it easier to collate the information submitted in the reports and monitor fishing activity. No special training or skills are necessary to prepare these reports.

5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

No duplicative requirements that have been identified.

6) A summary of economic impacts. The vessels that would be most directly affected by the VMS requirement are the limited entry trawl, longline and pot vessels, and the exempted trawl vessels from the two open access classes. In section 4.3 of this document, 247 limited entry trawl vessels were estimated to earn an average of \$180,000 exvessel revenue under the Council's 2003 depth-based management regime, as compared with the average \$154,000 if the fishery were managed without the depth-based closures, this is a difference of \$26,000 per vessel. Similarly, 197 limited entry longline and pot vessels were estimated to earn an average \$96,000 in exvessel revenue under the Council's depth-based management regime, as compared with an average of \$82,000 if the fishery were managed without depth-based management, a difference of \$14,000 per vessel. The difference in average revenues for the two classes of open access groundfish vessels is less, but still significant: \$7,000 for the 516 vessels with less than 5% of revenue from groundfish, and \$3,000 for the 771 vessels with more than 5% of revenue from groundfish.

While exvessel revenues appear higher on average for vessels likely to be required to use VMS under the depth-based management regime, it should be noted that non-VMS fishing costs may also be higher, offsetting some of the apparent gain. Unfortunately vessel cost data necessary to estimate this effect are not currently available. It is also important to keep in mind that using average revenues masks the variability of ex-vessel revenues in each vessel class. While on average, additional revenues appear greater than VMS-related costs, for some individual vessels in each class this will not be the case.

The average per vessel costs of adopting VMS under Monitoring System Alternative 3 range from \$2,163 to \$5,623 in the first year, and from \$548 to \$1,698 each subsequent year. Similarly under Monitoring System Alternative 4, VMS-related costs range from \$3,878 to \$7,607 in the first year, and from \$1,063 to \$2,342 each subsequent year. Comparing these per vessel average cost estimates with the average revenue gains derived above indicates that on average, and depending on how other non-VMS costs are affected, most vessels could potentially be better off with depth-based management, including VMS related costs, than under the likely alternative management regime. The obvious exception would be Open Access vessels with more than 5% of revenue from groundfish. Under most of the alternatives, the first year VMS-related costs would apparently outweigh the expected average benefit for these vessels (although once

VMS is installed, in subsequent years, the annual operating, maintenance and replacement costs would generally be less than average additional revenues).

7) A description of any alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimizes and significant economic impacts of the proposed rule on small entities.

The defined objective of for this proposed rulemaking is to ensure the integrity of groundfish conservation areas. To accomplish this three different approaches for a monitoring system were analyzed: a declaration system, a VMS monitoring program, and fishery Observers. In addition, the sectors of the groundfish fleet that would be required to have a VMS or observers and the distribution of costs between NMFS and the fishing industry for a monitoring system were analyzed. After considering the alternatives, the Council and NMFS determined that a VMS monitoring program was the alternative that best accomplished the defined objectives.

Two approaches to VMS were considered: a Basic VMS system and an Upgraded VMS system. The primary difference between the two alternative action was that the upgraded system uses two-way communications between the vessel and shore such that full or compressed data messages can be transmitted and received by the vessel, while the basic system only transmits positions to a shore station. It was determined that basic system was the minimum system that accomplished the stated objectives.

Most of the affected entities qualify as small businesses. As the rule was developed the burden on fishery participant was considered and changes were made to the reporting requirements ,so only the minimum data needed to monitor compliance with regulations are being required.

The VMS units that have been type-approved for this fishery range in costs and service features. This allows the vessel owner the flexibility in choosing the model that best fits the needs of their vessel. Vessel that have already purchased VMS transceiver units for other fisheries or personal purposes have been given consideration. Vessels will be allowed to retain existing VMS transceivers providing they are on the list of type-approved models and have been upgraded to the level required for the fishery.

The Submission of declaration reports were initially proposed as per trip report. Following consultation with fishery participants, it was determined that the needs of NMFS OLE and the USCG could be met with less frequently made declaration reports. Therefore, it was determined that a declaration report identifying the type of gear being used by a vessel would remain valid until cancelled or revised by the vessel operator. This results in a significant reduction in the number of reports.

Following consultation with fishery participants, it was determined that some vessels may prefer to reduce the costs of reporting when leaving the EEZ off the coasts of Washington, Oregon, and California. Because a substantial number of permitted vessels also fish in waters off Alaska and in areas outside the EEZ, and because vessels are commonly pulled out of the water for extended periods, a VMS hourly report exemption option was added, which included an exemption report.

7.0 List of Preparers

This document was prepared by the Northwest Regional Office of the NMFS. Contributors from the NMFS: Becky Renko, lead and primary author; Yvonne derReynier, Carrie Nordeen, Jamie Goen. Ed Waters of the Pacific Fishery Management Council provided the analysis of the expected economic effects of the fishery participants. Steven Springer of the National Marine Fisheries Service Office for Law Enforcement provided provide technical information on VMS system and costs. Will Daspit, of the Pacific States Marine Fish Commission who provided PacFin data used in the analysis.

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